

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

DENZIL T. MOORE,

Plaintiff,

v.

**2:06 CV 71
(Maxwell)**

**FEDERAL BUREAU OF PRISONS,
RICHARD RAMIREZ, Regional Medical Director,
ELIZABETH MASTELLER,
Dr. ELLEN MACE,
JANET BUNTS,
MARK DIB,**

Defendants.

ORDER

It will be recalled that on July 13, 2006, *pro se* Plaintiff Denzil T. Moore filed the above-styled civil rights action pursuant to 42 U.S.C. § 1983 with the Court.

It will further be recalled that the case was referred to United States Magistrate Judge James E. Seibert in accordance with LR PL P 83.02, *et seq.*, and 28 U.S.C. §§ 1915(e) and 1915A.

It will further be recalled that, by Order entered October 16, 2006, Magistrate Judge Seibert issued a Report And Recommendation which recommended that the *Bivens* claims against the Defendants in their official capacities be dismissed; that the claim against the Bureau of Prisons be dismissed because *Bivens* actions are only available against individual federal officials; that Defendants Ramirez and White be dismissed for a lack of personal involvement and because respondeat superior cannot form the basis of *Bivens* claims; that Defendant Wendt be dismissed for failure to state

an Eighth Amendment ineffective medical treatment claim; and that Defendant Ramirez be made to answer the Complaint as it appeared that he may have been partially responsible for the Plaintiff's health care at FCI Gilmer. The Plaintiff filed Objections to Magistrate Judge Seibert's October 16, 2006, Report And Recommendation on October 26, 2006.

Thereafter, on August 24, 2007, the Plaintiff filed a Motion To File An Amended Complaint. The Plaintiff's Motion To File An Amended Complaint was granted by Order entered by Magistrate Judge Seibert on December 21, 2007. In addition to granting the Plaintiff's Motion To File An Amended Complaint, Magistrate Judge Seibert's December 21, 2007, Order vacated his October 16, 2006, Report And Recommendation and directed the Clerk of Court to terminate Defendants Watts; White and Wendt and to add Defendants Masteller; Mace; Bunts; and Dib.

Thereafter, on January 4, 2008, Magistrate Judge Seibert entered an Order to Answer directing that a summons be issued for each Defendant and noting that the United States should be substituted as the proper Defendant for the FTCA claim.

On April 16, 2008, a Motion To Dismiss Or In The Alternative Motion For Summary Judgment and Memorandum In Support thereof were filed by the Defendants. The Plaintiff's Memorandum Of Law In Support Of His Opposition To Defendants' Motion To Dismiss, Or In The Alternative, Motion For Summary Judgment was filed on June 19, 2008.

On August 20, 2008, Magistrate Judge Seibert issued a Report And Recommendation wherein he recommended that the Defendant's Motion To Dismiss Or In The Alternative Motion For Summary Judgment be granted and that the above-styled civil

action be dismissed with prejudice for failure to state a claim upon which relief can be granted.

In his Report and Recommendation, Magistrate Judge Seibert provided the parties with ten (10) days from the date they were served with copies of said Report and Recommendation in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Report and Recommendation.

On September 2, 2008, the Plaintiff's Objection To Report And Recommendation was filed with the Court.

Upon an independent *de novo* consideration of all matters now before the Court, it appears to the Court that the issues raised by the Plaintiff in his Complaint were thoroughly considered by Magistrate Judge Seibert in his Report And Recommendation. Furthermore, upon consideration of the Plaintiff's Objection to said Report And Recommendation, it appears to the Court that the Plaintiff has not raised any issues that were not thoroughly considered by Magistrate Judge Seibert in said Report And Recommendation. Moreover, the Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Seibert's Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled civil rights action. Accordingly, it is

ORDERED that the Report And Recommendation entered by United States Magistrate Judge James E. Seibert on August 20, 2008 (Docket No. 51), be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Defendants' Motion To Dismiss Or In The Alternative Motion For Summary Judgment (Docket No. 39) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Plaintiff's Complaint be, and the same is hereby, **DISMISSED, WITH PREJUDICE**, for failure to state a claim upon which relief can be granted, and **STRICKEN** from the docket of this Court. It is further

ORDERED that the Clerk of Court shall enter judgment for the Defendants. It is further

ORDERED that, should the Plaintiff desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court of Appeals for the Fourth Circuit.

ENTER: February 3, 2009

/S/ Robert E. Maxwell
United States District Judge